



## *City Council Memorandum*

**To:** Mayor Fasbender & City Councilmembers  
**From:** City Administrator Dan Wietecha  
**Date:** April 5, 2021  
**Item:** Dakota County Incentive for Solid Waste Processing

### **Council Actions Requested:**

1. Approve Joint Powers Agreement between the County of Dakota and the City of Hastings for Solid Waste Processing.
2. Refer discussion of potential uses of incentive funds to Utilities Committee.

### **Background Information:**

In late 2019 and 2020, we discussed the possibility of a financial incentive from Dakota County to continue our organized residential solid waste collection and having the municipal solid waste (MSW) processed at the Red Wing Solid Waste Material Recovery Facility.

The County has included a \$25 per ton incentive in its 2021 budget. Based on the tonnage of MSW in 2020, the incentive would total about \$142K. Under the agreement, the incentive be paid quarterly, based on MSW tonnage reports, and could be used by the City “to reduce the costs to the payers of solid waste collection services in the City or to implement the solid waste strategies and tactics in the Dakota County Solid Waste Master Plan, or both.” Incentive funds must be spent by December 31, 2022.

### **Financial Impact:**

New revenue source. Based on tonnage of MSW in 2020, incentive would total about \$142K.

### **Committee Discussion:**

Not applicable

### **Attachments:**

- Joint Powers Agreement between the County of Dakota and the City of Hastings for Solid Waste Processing
- Link to Dakota County Solid Waste Master Plan (2018-2038):  
<https://www.co.dakota.mn.us/Environment/ReportsStudies/solid-waste-master-plan/Documents/SolidWasteMasterPlan.pdf>

**JOINT POWERS AGREEMENT BETWEEN  
THE COUNTY OF DAKOTA AND  
THE CITY OF \_\_\_\_\_  
FOR SOLID WASTE PROCESSING**

**WHEREAS**, Minnesota Stat. § 471.59 authorizes local governmental units to jointly or cooperatively exercise any power common to the parties; and

**WHEREAS**, Dakota County (County) is a political subdivision of the State of Minnesota; and

**WHEREAS**, the City of \_\_\_\_\_ (City) is a governmental and political subdivision of the State of Minnesota; and

**WHEREAS**, the City has a solid waste abatement program in compliance with state and County requirements; and

**WHEREAS**, Minnesota Sate. § 115A.471 requires that waste processing facilities that serve the metropolitan area be at capacity before waste can be landfilled; and

**WHEREAS**, the Metropolitan Solid Waste Management Policy Plan, 2016-2036 provides: that the Minnesota Pollution Control Agency will not review any request for additional land disposal capacity for a landfill located in the Metropolitan Area unless Mixed Municipal Solid Waste (MMSW) resource recovery facilities servicing the Twin Cities Metropolitan Area are operating at capacity and waste has been certified as unprocessable by metro counties; and

**WHEREAS**, the City collects MMSW or has a contract with a single waste hauler to collect MMSW from all residential generators within the City; and

**WHEREAS**, the cities of Hastings and Farmington divert MMSW to the Red Wing Resource Recovery Facility (RRF) contributing to the MMSW loads needed for it to operate at full capacity; and

**WHEREAS**, the parties desire to work cooperatively to ensure the Red Wing Resource Recovery Facility continues to operate at capacity.

**NOW, THEREFORE**, in consideration of the mutual promises and benefits that the County and City shall derive from this Agreement, the Count and City hereby enter into this Agreement for the purposes stated herein.

**SECTION 1  
PURPOSE**

The purpose of this Agreement is to provide for cooperation and funding between the County and the City to ensure MMSW from the City is processed at a resource recovery facility.

**SECTION 2  
PARTIES**

The parties to this Agreement are the County of Dakota, Minnesota and the City, collectively referred to as the "parties".

**SECTION 3  
TERM**

Notwithstanding the dates of the signatures of the parties, this Agreement shall be in effect January 1, 2021, and shall continue in effect until December 31, 2021, or until termination in accordance with the provisions herein.

**SECTION 4  
COOPERATION**

The County and the City agree to cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement and to, in good faith, undertake resolution of any dispute in an equitable and timely manner.

## SECTION 5 RESPONSIBILITIES OF THE CITY

- 5.1 The City shall have a solid waste abatement program in compliance with state and County requirements.
- 5.2 The City shall collect MMSW or shall have a contract with a waste hauler to collect MMSW from all residential generators within the City.
- 5.3 The City shall maintain records of the weight, in tons, of all the MMSW collected within the City that is processed at the Red Wing Resource Recovery Facility. On a quarterly basis, the City shall submit, a quarterly reimbursement request on a form provided by the County attached as Exhibit 1 and supporting documentation to the County for reimbursement.
- 5.4 Funds received from the County under the provisions of this Agreement shall only be used to offset the costs of waste processing to the City's customers or to implement the solid waste strategies and tactics in the Dakota County Solid Waste Master Plan, or both. Funding can be used to supplement, but not supplant, the funding obligations of the Dakota County Community Waste Abatement Grant Program.
- 5.5 The City shall submit an annual report, on a form provided by the County attached as Exhibit 2, detailing how funds provided under this Agreement offset the costs of waste processing to the City's customers. The City shall also detail how funds not directly used to reduce costs to payers of solid waste collection services in the city were used. The report shall clearly identify the activities conducted and link them to the relevant strategies and tactics identified in the Dakota County Solid Waste Master Plan. The report must be submitted to the County Liaison no later than February 15, 2022. Any funds provided under this Agreement not expended in 2021, shall be expended by December 31, 2022 and accounted on the annual report (Exhibit 2) no later than February 15, 2023.

## SECTION 6 PAYMENT

- 6.1 Payment. The County will pay on a reimbursement basis, \$25.00 per ton of MMSW verifiably processed at the Red Wing resource recovery facility up to a total of no more than \$\_\_\_\_\_. All requests for payment shall be supported by documentation verifying the total weight in tons of MMSW processed at the Red Wing resource recovery facility. The County may refuse to pay any claim that is not specifically authorized by this Agreement. Payment of a claim shall not preclude the County from questioning the propriety of the claim. The County reserves the right to be repaid for any overpayment or disallowed claim.
- 6.2 Timing. The City shall submit reimbursement requests on the appropriate County-approved form (Exhibit 1) on a quarterly basis. Payment will be provided by the County within 45 days of receipt of a reimbursement request.

## SECTION 7 INDEMNIFICATION

**7.1 IN GENERAL.** Each party to this Agreement shall be liable for the acts of its officers, employees or agents and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party, its officers, employees or agents.

**7.2 LIMITATIONS.** The provisions of Minn. Stat. § 471.59, the Municipal Tort Claims Act, Minn. Stat. ch. 466 and other applicable laws govern liability of the County and the Municipality

**7.3 SURVIVORSHIP.** The provisions of this Section shall survive the expiration or termination of this Agreement.

## SECTION 8 AUTHORIZED REPRESENTATIVES AND LIAISONS

**8.1 AUTHORIZED REPRESENTATIVES:** The following named persons are designated the Authorized Representatives of the parties for purposes of this Agreement. These persons have authority to bind the party they represent and to consent to modifications, except that the authorized representative shall have only the authority specifically or generally granted by their respective governing boards. Notice required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement.

TO THE COUNTY

Georg T. Fischer, Director  
Environmental Resources Department Director  
Western Service Center  
14955 Galaxie Avenue  
Apple Valley, MN 55124

TO THE CITY

\_\_\_\_\_ (or successor)  
City of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, MN 55\_\_\_\_

In addition, notification to the County regarding termination under Section 9 of this Agreement by the other party shall be provided to both the Office of the Dakota County Attorney, Civil Division, 1560 Highway 55, Hastings, MN 55033, and the City Attorney at \_\_\_\_\_.

**8.2 LIAISONS.** To assist the parties in the day-to-day performance of this Agreement, to ensure compliance, and provide ongoing consultation, a liaison shall be designated by the County and the Municipality. The County and the Municipality shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Agreement, the following persons are the designated liaisons:

County Liaison: Renee Burman  
Telephone: (952) 891-7042  
Email: Renee.burman@co.dakota.mn.us

City Liaison: \_\_\_\_\_  
Telephone: 651-\_\_\_\_\_  
Email: \_\_\_\_\_

**SECTION 9  
TERMINATION**

**9.1 IN GENERAL.** Either party may terminate this Agreement for cause by giving seven days' written notice or without cause by giving thirty (30) days' written notice, of its intent to terminate, to the other party. Such notice to terminate for cause shall specify the circumstances warranting termination of the Agreement. Cause shall mean a material breach of this Agreement and any supplemental agreements or amendments thereto. Notice of Termination shall be made by certified mail or personal delivery to the authorized representative of the other party. Termination of this Agreement shall not discharge any liability, responsibility or right of any party, which arises from the performance of or failure to adequately perform the terms of this Agreement prior to the effective date of termination.

**9.2 TERMINATION BY COUNTY FOR LACK OF FUNDING.** Notwithstanding any provision of this Agreement to the contrary, the County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, Minnesota Agencies, or other funding source, or if its funding cannot be continued at a level sufficient to allow payment of the amounts due under this Agreement. Written notice of termination sent by the County to the Municipality by email or facsimile is sufficient notice under this section. The County is not obligated to pay for any services that are provided after written notice of termination for lack of funding. The County will not be assessed any penalty or damages if the Agreement is terminated due to lack of funding.

**SECTION 10  
MODIFICATIONS**

Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, approved by the parties' respective Boards, and signed by the Authorized Representatives of the County and the Municipality.

**SECTION 11  
MINNESOTA LAW TO GOVERN**

This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the County of Dakota, State of Minnesota.

**SECTION 12  
MERGER**

This Agreement is the final expression of the Agreement of the parties and the complete and exclusive statement of the terms agreed upon and shall supersede all prior negotiations, understandings, or agreements.

**SECTION 13  
SEVERABILITY**

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts that are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.

**SECTION 14  
GOVERNMENT DATA PRACTICES**

The City and the County must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided, created, collected, received, stored, used, maintained, or disseminated under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the City or the County. This section survives the expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

**COUNTY OF DAKOTA COUNTY**

\_\_\_\_\_  
Georg Fischer, Director  
Environmental Resources Department  
Date of Signature: \_\_\_\_\_

**CITY OF** \_\_\_\_\_

\_\_\_\_\_  
, Mayor

Date of Signature: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Attorney/Date  
KS-20-58\_

County Board Res. No. \_\_\_\_\_

Attest \_\_\_\_\_  
\_\_\_\_\_  
(title)

Date of Signature: \_\_\_\_\_

Exhibit 1

Dakota County Solid Waste Processing Incentive

Quarterly Reimbursement Request

City of \_\_\_\_\_

Quarter \_\_\_\_\_

| Month                | Tons of MSW Collected | Tons of MSW Delivered to the Red Wing Resource Recovery Facility | Tons of Waste Processed at the Red Wing Resource Recovery Facility |
|----------------------|-----------------------|--|--|
|                      |                       |  |  |
|                      |                       |  |  |
|                      |                       |  |  |
| TOTAL TONS PROCESSED |                       |  |  |

Reimbursement Request:

Total Tons Processed \_\_\_\_\_ x \$25/ton= \_\_\_\_\_

Date: \_\_\_\_\_

Signature : \_\_\_\_\_

City Liaison

Please attach processing verification documentation

Exhibit 2

Dakota County Solid Waste Processing Incentive

Annual Report

City of \_\_\_\_\_

|   |           |
|---|-----------|
| Solid Waste Processing Incentive Funds used to directly offset the costs of waste processing to the City's customers                          | \$        |
| Solid Waste Processing Incentive Funds used to implement the solid waste strategies and tactics in the Dakota County Solid Waste Master Plan. | \$        |
| <b>Total Solid Waste Processing Incentive Funds Received from the County</b>  | <b>\$</b> |

Provide details on the solid waste activities that the city conducted with funds from the Dakota County Solid Waste Processing Incentive.

| Activity                              | Amount    | Dakota County Solid Waste Master Plan Strategy or Tactic   |
|---------------------------------------|-----------|--|
| <i>EXAMPLE: Tire Collection Event</i> | \$2,000   | <i>6. Non-Municipal Solid Waste, 3. Provide opportunities to recycle and properly manage non-MSW that is banned from disposal, a. Collect tires at county collection sites and encourage municipalities to offer tire collections at community clean-up events</i> |
|                                       | \$        |  |
|                                       | \$        |  |
|                                       | \$        |  |
|                                       | \$        |  |
| <b>TOTAL</b>                          | <b>\$</b> |  |

Contact the County Liaison for assistance with identifying appropriate Strategies and Tactics from the Dakota County Solid Waste Master Plan.

Date: \_\_\_\_\_

Signature : \_\_\_\_\_

City Liaison